05 1217

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

COLEMAN LAW FIRM
A Professional Corporation
Ronald D. Coleman (RC 3875)
410 Park Avenue - 15th Floor
New York, New York 10022
(212) 752-9500
Attorneys for Plaintiff
S & L Vitamins, Inc.

SEYBERT, J. FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D.N.Y. ORENSTEIN, M.J. ★ MAR - 4 2005 ★ BROOKLYN OFFICE

S & L VITAMINS, INC., Plaintiff, - vs. - AUSTRALIAN GOLD, INC., Defendant.	CIVIL ACTION NO. 05-CV-______ (____) **COMPLAINT FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF TRADEMARK RIGHTS AND NON-INTERFERENCE WITH CONTRACT AND FOR UNFAIR COMPETITION** **DEMAND FOR JURY TRIAL**

S & L Vitamins, Inc. v. Australian Gold, Inc. Doc. 1

Plaintiff, S & L Vitamins, Inc., by and through its undersigned attorneys, for its complaint against defendant Australian Gold, Inc., alleges as follows:

THE PARTIES

1. Plaintiff S & L Vitamins, Inc., ("S & L"), is a New York corporation with a principal place of business at 308 East Montauk Highway, Lindenhurst, New York.

2. S & L does business as "Body Source."

3. Defendant Australian Gold, Inc. is a Delaware Corporation with a principal place of business at with a principle place of business at 6270 Corporate Drive Indianapolis, Indiana.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under 15 U.S.C.S. § 1121, 28 U.S.C.S. §1331, and 28 U.S.C.S. §1338(a), in that this case arises under the trademark laws of the United States, 15 U.S.C.S. §1125(a), and on 28 U.S.C. §2201, the Federal Declaratory Judgment Act.

5. Subject matter jurisdiction is further founded on 28 U.S.C. §1367(a) as a matter under the Court's supplemental jurisdiction over state law claims so related to the federal issues in the action that they form part of the same case or controversy.

6. Personal jurisdiction over defendant is vested in this Court because the claims alleged arise from acts and conduct defendant purposefully directed towards plaintiff, a New York resident.

7. Venue is proper in the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. §1121 (b) and (c), because a substantial portion of the harm sought to be avoided, and a substantial part of the events and omissions

which give rise to the claims alleged herein are occurring in and about this District.

FACTS

8. Plaintiff operates an Internet website which provides consumers with the opportunity to purchase, at discount prices, various products including nutritional and performance-enhancing supplements, located at www.TheSuppleNet.com ("SuppleNet.com")

9. Plaintiff's website operates on a technological and electronic commerce platform contracted from Yahoo! Small Business Merchant Solutions, a service of Yahoo!, Inc. ("Yahoo!").

10. Yahoo! is the No. 1 Internet brand globally and attracts the largest audience worldwide, over 237 million unique users per month. Yahoo! has become the Internet's leading global business services company, offering a comprehensive network of essential services for businesses of all sizes. Yahoo!'s corporate mission is to represent Internet best-practices and expertise.

11. Plaintiff's website has earned the privilege of displaying the Yahoo! Top Service icon.

12. According to Yahoo!, "The five-star Top Service icon next to a store's name is a sign of superlative quality. It means that the store is participating in our Merchant Rating

System, and customers who have ordered from that store have given it the highest ratings."

13. Indeed, the SuppleNet.com website features an extensive sampling of appreciative testimonials from customers.

14. In addition to supplements, plaintiff's website also offers discount prices on a wide selection of premium tanning products (the "Tanning Products").

15. All the Tanning Products sold by plaintiff at the SuppleNet.com website are purchased by the plaintiff at retail tanning salons.

16. To ensure control over their distribution network, many manufacturers of the Tanning Products enter into agreements with their wholesale distributors which forbid those distributors not to sell the Tanning Products to retailers other than tanning salons, such as retail and wholesale stores, pharmacies, beauty supply stores, flea markets and the Internet ("Exclusive Distribution Policies").

17. Certain manufacturers of the Tanning Products state publicly that their purpose in maintaining tight control over the channels of distribution is to ensure proper consumer guidance from the highly qualified professionals employed at tanning salons.

18. In fact, the "training" required properly to apply and otherwise utilize the Tanning Products does not require

particular expertise, and most regular users of these products are able to obtain the knowledge necessary to use them properly with a minimum of self-education.

19. The real reason for maintenance of an Exclusive Distribution Policy is not consumer protection, but commercial and business strategy.

20. Upon information and belief, defendant maintains an Exclusive Distribution Policy.

21. Among the Tanning Products sold by plaintiff on the SuppleNet.com website are Tanning Products manufactured by defendant (the "Australian Gold Products").

22. All Australian Gold Products sold by plaintiff on the SuppleNet.com website are purchased by plaintiff from tanning salons, and not from wholesale distributors.

23. On January 15, 2004, plaintiff's principals received a letter from counsel for ETS, Inc., which then owned Australian Gold, Inc., delivered via Certified Mail, at the location of an unrelated entity, a store called Body Source in Lindenhurst, New York (the "January 15, 2004 Letter").

24. The January 15, 2004 Letter accused plaintiff of trademark infringement and intentional interference with defendant's contracts with its distributors in connection with plaintiff's sale of the Australian Gold Products and making various demanding that plaintiff (a) remove all references to

Australian Gold from its website, (b) cease and desist from selling Australian Gold Products, and provide extensive purchase, supply and pricing information to defendant under threat of litigation. A copy of the January 15, 2004 letter is attached hereto as Exhibit A.

25. After a number of other exchanges, plaintiff responded substantively, through counsel, in a letter dated January 27, 2004, explaining that all plaintiff's purchases of Australian Gold Products were made from retailers, not distributors; requesting the legal authority on which defendant's claims of tortious interference were based; and rebutting the claim of trademark infringement. A copy of the January 27, 2004 letter is attached hereto as Exhibit B.

26. Defendant responded through counsel by letter dated January 28, 2004, demanding that plaintiff prove that its source of Australian Gold Products was retailers by providing "the names of all retail locations from which such purchases have been made" (the "January 28, 2004 letter"). A copy of the January 28, 2004 letter is attached hereto as Exhibit C.

27. The January 28, 2004 letter also enclosed a copy of a multimillion-dollar judgment from a federal court in Oklahoma obtained by defendant against other persons on trademark grounds.

28. The next day, plaintiff's counsel replied by letter (the "January 29, 2004 letter"), noting that the supply information demanded by defendant was proprietary and confidential, and that defendant had neither a legal basis to demand the information nor a factual basis on which to claim plaintiff was lying. A copy of the January 29, 2004 letter is attached hereto as Exhibit D.

29. The January 29, 2004 letter also noted that the Oklahoma judgment involved purchases from a distributor, not retailers, and contained virtually no information that would permit plaintiff to evaluate the activities that gave rise to the liability imposed in that matter to compare them to its own.

30. There was no further correspondence between the parties until February 22, 2005, when defendant – now under new ownership – sent a letter to plaintiff, over the signature of its chief executive officer, Leslie Hartlieb, reiterating the earlier charges and threatening litigation unless plaintiff complied with defendant's demands. A copy of the February 22, 2005 letter is attached hereto as Exhibit E.

31. Fearing that defendant would seek to cripple competition from plaintiff by tying it up in litigation or regularly threatening to do so, plaintiff brought this action on this date.

FIRST CAUSE OF ACTION
Declaratory Judgment of Non-Infringement
(28 U.S.C. §2201)

32. Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs.

33. Plaintiff's use of the various product names and the brand name of the Australian Gold Products is fair use and does not infringe any federal or state trademark.

34. By accusing plaintiff of federal and state trademark infringement, defendant has created a present and actual controversy between the parties.

35. Defendant's action have caused plaintiff to bring this action which is the only means for it to maintain its lawful sale of the Australian Gold Products.

36. Plaintiff's remedy at law, in the event defendant seeks or obtains a preliminary injunction, is not adequate to compensate it for the injuries threatened or inflicted by defendant.

37. Plaintiff requests that this Court declare and adjudicate the parties' respective rights and duties with respect to plaintiff's fair use of the trademarks owned, associated with or allegedly owned by defendant.

SECOND CAUSE OF ACTION
Declaratory Judgment of Non-Interference with Contract
(28 U.S.C. §2201)

38. Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs.

39. Plaintiff purchases its whole stock of Australian Gold Products from retail tanning salons.

40. Upon information and belief, such tanning salons are authorized resellers of the Australian Gold Products pursuant to defendant's own Exclusive Distribution Policy. By accusing plaintiff of intentional interference with contract, defendant has created a present and actual controversy between the parties.

41. Defendant's action have caused plaintiff to bring this action which is the only means for it to maintain its lawful sale of the Australian Gold Products.

42. Plaintiff's remedy at law, in the event defendant seeks or obtains a preliminary injunction, is not adequate to compensate it for the injuries threatened or inflicted by defendant.

43. Plaintiff requests that this Court declare and adjudicate the parties' respective rights and duties with respect to plaintiff's source of Australian Gold Products.

THIRD CAUSE OF ACTION
Unfair Competition

44. Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs.

45. On information and belief, the purpose of defendant's cease and desist letters is to control its Exclusive Distribution Policy, and not to enforce its trademarks, prevent the purported interference with contract it alleged without any basis, or to enforce any of the other supposed rights set forth in the January 15, 2004 Letter.

46. Defendant knows or should know that its claims of trademark infringement are without merit.

47. Defendant's claims of trademark infringement are false, are known by defendant to be false, and was brought only to induce deprive plaintiff of the benefits of the fair use of the terms by which it sells consumers the Australian Gold Products over the Internet.

48. Defendant has invoked spurious claims under the Lanham Act, and other claims in an attempt to obtain a business advantage beyond the rights afforded defendant under such laws.

49. Defendant's actions constitute unfair business practices under applicable state and federal law.

50. Defendant's actions are unlawful, unfair, wrongful, malicious, and fraudulent, in that they constitute misuse of federal and state trademark law, the making of frivolous

trademark infringement claims, tortious interference with prospective economic advantage, trademark misuse, malicious prosecution, misrepresentation, and other forms of unfair competition, all in order to secure a business asset belonging to plaintiff.

51. Plaintiff has suffered and will continue to suffer economic harm from defendant's actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff S & L Vitamins, Inc. prays for judgment against defendant Australian Gold, Inc. as follows:

1. For a declaration that plaintiff's use of the various trademarks and alleged trademarks associated with the Australian Gold Products is fair use and does not infringe any trademark or other right held by defendant.
2. For a declaration that plaintiff's sale of the Australian Gold Products is not an actual or prospective tortuous interference with contract.
3. That defendant, its officers, directors, servants, employees, attorneys, agents, representatives, distributors, and all persons in active concert or participation with it, be enjoined and restrained permanently from interfering with plaintiff's use of the various trademarks and alleged trademarks associated with the Australian Gold Products.
4. For damages to be proven at trial;

5. For punitive damages;

6. That defendant take nothing from plaintiff;

7. For reasonable attorneys' fees and costs; and

8. Such other relief as the Court deems appropriate.

Respectfully submitted,

By: [signature]

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Ronald D. Coleman (RC 3875)
410 Park Avenue - 15th Floor
New York, New York 10022
(212) 752-9500
Attorneys for Plaintiff
S & L Vitamins, Inc.

Dated: March 3, 2005

JURY DEMAND

Plaintiff hereby demands a jury trial on all the issues raised in this action so triable.

By: [signature]

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Ronald D. Coleman (RC 3875)
410 Park Avenue - 15th Floor
New York, New York 10022
(212) 752-9500
Attorneys for Plaintiff
S & L Vitamins, Inc.

Dated: March 3, 2005

EXHIBIT A

ICEMILLER[SM]
LEGAL & BUSINESS ADVISORS

January 15, 2004

WRITER'S DIRECT NUMBER: 317-236-2179
direct fax: 317-592-5418
internet: scott.matthews@icemiller.com

VIA CERTIFIED MAIL

Body Source
308 E. Montauk Hwy
Lindenhurst, NY 11757

Re: Sale of ETS products on www.thesupplenet.com

Dear Sir/Madam:

This Firm represents ETS, Inc. which is the distributor of Australian Gold™, Caribbean Gold™ and Swedish Beauty™ tanning products. It has come to our attention that you are selling either Australian Gold, Caribbean Gold, or Swedish Beauty tanning products ("Products"), or all of the above, to consumers on your website.

ETS sells the Products directly to tanning salons for re-sale to consumers in connection with their delivery of on-site tanning services and to distributors for re-sale to such tanning salons. Our agreements expressly prohibit the sale of the Products through web-site remarketers such as yourself.

This letter constitutes notice to you that the seller(s) of the Products you are attempting to sell has sold those Products to you in express violation of a valid and binding contract with ETS. Any further purchases of Products by you from these sellers – or any other seller – will cause a breach of the distributorship contract and will constitute interference with that contract that will expose you to litigation and a claim for damages against you. Furthermore, any use of the Australian Gold, Caribbean Gold or Swedish Beauty names in your website's html code constitutes trademark infringement.

ETS has sued several internet retailers that chose to ignore ETS' prior warnings. To avoid ETS from taking legal action against you, you must agree (a) to immediately and permanently remove all reference to Australian Gold, Caribbean Gold and Swedish Beauty Products from your website and (b) to cease and desist from selling Australian Gold, Caribbean Gold and Swedish Beauty Products. In addition we will require that you provide to us (a) the dates on which you purchased the Products currently in your inventory, (b) the sellers of such products and (c) the price you paid for the products. You must also remove all references to any of the trademarked names in your website's html code. In exchange for the foregoing, ETS will not sue you and will discuss with you ETS' purchase of your current inventory of the Products.

If you do not provide to us the information we requested in the preceding paragraph within seven (7) days from the date of this letter, ETS is prepared to take action against you.

ETS considers this matter to be serious. Please do not take this letter lightly as your failure to comply will make litigation against you imminent.

Sincerely,

ICE MILLER

Scott D. Matthews

SDM/ksw

cc: William Pipp
Tracy Ring
Susan Higgins

INDY 1221114v1

Exhibit B

COLEMAN LAW FIRM
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January 27, 2004

BY FACSIMILE

Scott D. Matthews, Esq.
Ice Miller
One American Square
P.O. Box 82001
Indianapolis, IN 46282-0002

Re: TheSuppleNet.com

Dear Mr. Matthews:

We represent "Body Source," which operates the referenced website. We are aware that you have received a previous communication from attorney Jeffrey Levitt in Amityville, New York, who is copied below, on behalf of our client. Please direct future correspondence to this firm. The following is conveyed without waiver of any of our client's rights or defenses.

As Mr. Levitt noted, our client buys the ETS products sold on its website at retail. If your firm has a standard contract utilized with all its tanning salon customers, notably those in the New York area, I reiterate Mr. Levitt's request that you forward a specimen of the same to us so we may confirm whether it does in fact purport to restrict resale on the Internet, as your January 15th letter says, as well as to analyze whether such a provision is, as you say, "valid and binding" under applicable law. As far as we understand, you have not responded to Mr. Levitt's reasonable and simple request for this information. Our client has until now had no reason to believe that its actions are prohibited by law or contract, and your client's mere assertion, without more, that they are prohibited is not sufficient to remove the presumption of legality from our client's activities.

Similarly, our ability to advise our client regarding the appropriate course of action will be enhanced if you would inform us of the legal authority on which you are relying in your letter. Specifically, please advise us of support for the proposition that one who purchases merchandise at one or more *retail* locations may be subject to liability for tortious interference with contract for selling that merchandise to others, based on a contract between the retailer and a third party.

Your letter does not allege trademark infringement, unless the phrase "any use of the [product] names in your website's HTML code constitutes trademark infringement" is meant to do so. This assertion, however, is plainly a misstatement of the law. Please note that we are not aware that our client is making any trademark use of your client's alleged common law trademarks, but have advised it immediately to remove any suggestion of endorsement, affiliation or sponsorship, including any suggestion that Body Source or TheSuppleNet.com are authorized distributors of your client's products, such as are likely to cause confusion. Our client has also opted to add a disclaimer to its website to clarify its status and relationship, or lack thereof, with the companies whose goods it sells. Our client will, however, continue to make fair use of any alleged trademarks to the extent permitted by law.

Our client is eager to cooperate in ensuring that no party's legal rights are violated while at the same time exercising its maximum legally-permissible scope of enterprise. Nonetheless, despite the claimed urgency and bellicosity of your client's January 15th letter, we note that we have asked for the contracts in question, and not received them; and that you have made at least one serious misstatement of the law regarding the use of trademarks on an Internet website. It is critical that your client demonstrate its bona fides at this juncture to avoid the appearance that it is attempting wrongfully to restrain trade merely by threatening meritless lawsuits.

Please contact me at your earliest convenience to discuss the foregoing so that unnecessary litigation may be averted.

Very truly yours,

Ronald D. Coleman

cc: Jeffrey Levitt, Esq.

Exhibit C

ICEMILLER℠
LEGAL & BUSINESS ADVISORS

January 28, 2004

WRITER'S DIRECT NUMBER: (317) 236-2179
DIRECT FAX: (317) 592-5418
Internet: SCOTT.MATTHEWS@ICEMILLER.COM

VIA FACSIMILE AND U.S. MAIL
Ronald D. Coleman
Coleman Law Firm
The Diamond Building
881 Allwood Road
Clifton, NJ 07012

RE: ETS, Inc. v. TheSuppleNet.com.

Dear Mr. Coleman:

We are in receipt of your letter dated January 27, 2004 and are responding to the statements made by you.

Be advised that upon receipt of the letter from Jeffrey Levitt, we immediately provided Mr. Levitt with a copy of our Distributorship Agreement which is in effect between ETS and all of its distributors. As a courtesy, we are providing you with another copy of that agreement in case Mr. Levitt does not forward it to you.

The purpose of our initial letter was twofold. First, it requested that your client cease and desist selling these products over the internet. Second, the letter served as notice to your client that ETS has a distribution system which prevents the sale of these products over the internet and in locations other than tanning salons. If your client continues to make purchases of these products, it is subjecting itself to a lawsuit for tortious interference with ETS's contractual and business relationships. If it is your clients' position is that it is legitimately purchasing the Australian Gold™ and Swedish Beauty™ products from a retail location, please provide us with the names of all retail locations from which such purchases have been made.

It is not our job to educate you on trademark law but, as a courtesy, you should research the issue of trademark infringement in the context of the use of trademarked names in the metatag, otherwise known as the HTML code. Your client is using our client's trademarks without the permission or authorization in the metatag. The sole purpose of this unauthorized use is to divert customers to your client's website. If you question the validity of this claim, we suggest that you review a federal lawsuit which we tried to a jury last June, where the jury found the defendants liable for trademark infringement and tortious interference with contract, rendering a $5.23 million judgment in favor of our client. For your convenience, a copy of the Judgment is enclosed.

Let there be no mistake, ETS is dead serious about enforcing its distribution agreements and ensuring that its intellectual property rights are not infringed upon. We have made no misstatement of the law concerning the use of these trademarks on internet websites as evidenced by the judgment obtained in the Oklahoma federal lawsuit against the other internet retailer.

If your client wants to avoid litigation, it must come forward and make a full and complete disclosure as to where it is purchasing the Australian Gold™ and Swedish Beauty™ tanning lotions as well as comply with the demands previously made. We look forward to your response.

Sincerely,

ICE MILLER

Scott D. Matthews

SDM/ksw
Enclosure

cc: Steven Humke (w/o enc.)
Michael Wukmer (w/o enc.)
William J. Pipp (w/o enc.)
Jeffrey Levitt (w/enc.)
Susan Higgins (w/o enc.)

Exhibit D

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January 29, 2004

BY FACSIMILE

Scott D. Matthews, Esq.
Ice Miller
One American Square
P.O. Box 82001
Indianapolis, IN 46282-0002

FILE

Re: TheSuppleNet.com

Dear Mr. Matthews:

Thank you for your reply and for the courtesy of forwarding to me the documents mailed originally to Mr. Levitt.

It appears that ETS, Inc.'s distribution system, or at least the distributorship agreement, does not apply to retailers. You do not explicitly say this in your letter but if we are mistaken on this point please clarify it as soon as possible.

It is not our client's "position" that it is legitimately purchasing merchandise from a retail location; it is a statement of fact. ETS, Inc. ("ETS") appears to want proof of this and has demanded the identity of the retailers from which our client made its purchases. But ETS is not legally entitled to that information, which is both confidential and proprietary. If your client believes it has some bona fide reason to think that our client is lying, we would like to know what it is; our client will readily rebut it without recourse to the courts. Certainly, the mere fact that our client is in possession of ETS products, which are available in quantity at retail outlets as well as on eBay and other locations, does not obligate our client to defend its presumptively legal activities to a party in which it is not in privity. We are confident that ETS would never threaten to bring meritless litigation merely to achieve through discovery what it could not otherwise achieve legitimately, in order to restrain trade.

The judgment in *Hatfield* included in your package does not refer to any specific findings of fact. It is impossible to know what the defendants were doing in that case nor what defenses were pled or tried. According to ETS's online press release dated July 2, 2003, however, it appears that unlike our clients, the *Hatfield* defendants purchased ETS's products from distributors, not retailers. If proof was adduced at the trial that the *Hatfield* defendants made purchases from retailers, and some sort of finding was made that such a purchase would be actionable or otherwise relevant to the claims in that case, we would certainly be interested in knowing so we could advise our clients about the view of the court in Oklahoma.

Regarding trademark, obviously we all agree that our client does sell ETS products on the Internet. Web page coding, whether in visible text or metatags (both of which typically consist of HTML code), is a bona fide fair use if it is a fair description of a website's lawful content. No "diversion" takes place if the consumer gets precisely what he is looking for, as opposed to an infringing item or competitive source that does not sell the genuine item being sought. This has been understood since the *Playboy v. Welles* opinion which has been followed widely, as you know.

Like you, we are trying to keep our client out of court. We do not wish to litigate by facsimile. Like you, we assume our adversary knows the law or will be caused to regret not knowing it. But our client is not obligated to eliminate a line of business that by all the facts and law available appears to be legitimate. If there is legal authority that your client utilized in, or that comes out of, the *Hatfield* case, that imposes liability on (i) resellers of retail-bought merchandise or (ii) fair use on a web page by such a reseller, both our clients will benefit – speedily, economically and fairly – if you "educate us" and tell us what it is.

Please take this opportunity to make ETS's case on substance. My client is committed to defending its rights and its business. But it will heed any advice from us that ETS is correct on the merits and is entitled to make the demands in your letters. As of right now, we cannot give that advice, but remain open to persuasion and urge your client's enhanced frankness and good faith in resolving this matter fairly.

Very truly yours,

Ronald D. Coleman

Exhibit E

Australian Gold. Inc.

February 22, 2005

Via Fed Ex
Body Source
308 E Montauk Highway
Lindenhurst, NY 11757

RE: Australian Gold, Inc. v. Body Source

Dear Sir/Madame

Last year we sent you a letter demanding that you cease and desist from selling Australian Gold™, Caribbean Gold™, and Swedish Beauty™ tanning products on www.thesupplenet.com. Despite being on notice that internet sales are strictly prohibited, you have continued to sell these products with impunity.

Australian Gold, Inc. is serious about fighting product diversion and intends to take whatever steps that are necessary to ensure that our products remain a premium product in the tanning industry .Please be advised that Australian Gold, Inc has filed a lawsuit against several individuals who continue to sell these products on e-bay and internet web sites. Australian Gold, Inc obtained a $5.23 million judgment in Federal Court against a family who was selling our products in the internet. A substantial amount of those damages were punitive damages for their willful disregard for Australian Gold's demands to comply with it's distribution policy.

The amount of business you appear to be doing on www.thesupplenet.com warrants us suing you and seeking the same relief if your illegal activities do not stop.

If you choose to ignore this letter Australian Gold, Inc. will take action against you and seek actual and punitive damages, as well as a permanent injunction against you and enjoining you from selling our products on e-bay or internet web sites.

Corporate Office: 6270 Corporate Drive • Indianapolis, IN • 46278 • Phone (317) 290-8982 • Fax (317) 290-1086
Florida Regional Office: 4825 140th Avenue North, Suite G • Clearwater, FL • 33762
Phone (727) 535-0700 / 1-800-835-3826 • Fax (727) 535-6699 • E-mail info@australiangold.com

If you would like to resolve this matter, you may contact me directly to discuss an amicable resolution. Otherwise, we will look forward to discovering the scope of your business through depositions and discovery in the lawsuit that we will file against you.

Sincerely,

Leslie Hartlieb
Australian Gold, Inc
President/CEO
888-761-5107

LAH/sjw

Cc: Tracy Ring
Scott Matthews, Attorney